

Measures of Performance
Presented by the
California Emissions Testing Industries
Association
to the
Inspection and Maintenance Review Committee
August 22, 2006

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History and Discussion of Performance Measures

Performance measures have been the subject of past and recent discussion as related to the emissions inspection of vehicles under Smog Check II. Recently, performance measures have been discussed as a method to determine which station types or stations should receive “Directed Vehicles”.

During the course of recent industry discussion, generated by members of the Legislature on the issue of performance measures, it became evident there were no fair and accurate methods to determine performance for station type receipt of “Directed Vehicles”. This was true for an emission inspection station within the same station type category.

Vehicle Emissions Test Components

Vehicle emission inspections are conducted in 3 parts.

The visual test - performed by the technician

The functional test – performed by the technician

The tail pipe test – performed on ASM equipment

There is no difference, in statute or regulation, in the test conducted by each station type.

The test, by law and regulation, specifies what constitutes a complete test. Any deviation from the law is a potential violation and may subject a station and/or technician to punitive penalty as determined by the BAR. Ultimately, egregious and repeated violations can result in ARD License forfeiture.

Therefore, if a complete test is conducted, no element exists to compare the performance of one test versus another.

BAR Enforcement Issues

The IMRC is aware of industry issues as they relate to BAR Enforcement efforts. The IMRC conducted at least 2 meetings that included as a primary topic the subject of enforcement. Further, the Legislature mandated the Department of Consumer Affairs to contract with an “Enforcement Monitor” to evaluate the process and procedures of BAR Enforcement.

Having been involved in numerous industry discussions, our distilled perception of the industry view of BAR Enforcement efforts is that law and regulation are inconsistently applied and the enforcement actions of individual field offices and enforcement representatives are often subjective.

Mutual Settlement Agreement

The “Mutual Settlement Agreement” process was authorized by statute for use by the Air Resources Board and the Air Quality Management Districts. The MSA, as it pertains to the AQMDs was jointly developed with the impacted industry. The following is a section from a brochure prepared by the Sacramento Regional AQMD.

About the Sacramento Metropolitan Air Quality Management District

The Sacramento Metropolitan Air Quality Management District (AQMD) is the local government agency responsible for regulating stationary, non-vehicular sources of air pollution in Sacramento County. Its jurisdiction includes all unincorporated areas of Sacramento County as well as the incorporated cities of Sacramento, Elk Grove, Folsom, Galt, Citrus Heights, Isleton and Rancho Cordova.

Air Quality Regulations

Under both state and federal law, the AQMD is under a legal obligation to adopt and enforce air quality regulations. These regulations are intended to protect the public health and ensure that the air we breathe in Sacramento meets state and federal standards.

Violations of air quality regulations are subject to criminal or civil penalties, pursuant to California Health & Safety Code (CH&SC) § 42400 through § 42402. The AQMD is empowered by the CH&SC to enforce its rules and regulations and to settle civil violations.

Violation Notices

If you or your business receive a Notice of Violation (NOV) from a representative of the AQMD, you should take all reasonable and prudent steps necessary to bring your facility back into immediate compliance with AQMD rules. Once your facility is back in compliance, your case will be reviewed by the District to determine if the facts of the case support further enforcement action.

After your case is reviewed, you will be notified, in writing, of the District's decision to either:

- Offer you the opportunity to resolve the violation under the Mutual Settlement Program.
- Refer the case to District Counsel.
- Refer the case to the District Attorney.

AQMD

The Sacramento Regional AQMD indicates the implementation of the MSA has reduced enforcement costs and provided for optimal use of enforcement personnel. Further, it has substantially reduced legal costs to the SRAQMD and the regulated industry. The following provides detail from the SRAQMD on the monetary component used to determine the penalty and the guidelines setting forth the objective criteria used within the penalty computation.

ATTACHMENT 1 - MONETARY COMPONENT FORMULA

1. Select and circle the proper "gravity" component for each aggravation and mitigation factor 1 through 10.
2. Total each column of aggravation factors and place summation in the AGG box.
3. Total each column of mitigation factors and place summation in MIT box.
4. Subtract MIT from AGG and place remainder in the "total factor" (TF) box.
5. Apply settlement offer formula:

SETTLEMENT OFFER = C x TF

Where C = California Health & Safety Code (CH&SC)
Violation Category

SETTLEMENT OFFER = C x TF x N
(Multi-day violation)

Where N = Number of Days

AGGRAVATION FACTORS		GRAVITY COMPONENT			
	N/A	LOW	MODERATE	HIGH	
1. EXTENT OF HARM CAUSED BY VIOLATION	0	.06	.12	.18	
2. NATURE AND PERSISTENCE OF VIOLATION	0	.06	.12	.18	
3. LENGTH OF TIME VIOLATION OCCURRED		.06	.12	.18	
4. PAST VIOLATIONS	0	.06	.12	.18	
5. ECONOMIC BENEFIT OF NONCOMPLIANCE	0	.06	.12	.18	
TOTALS OF AGGRAVATION COLUMNS					
AGG (SUM OF AGGRAVATION TOTALS)					
MITIGATION FACTORS					
6. DEGREE AND RECORD OF MAINTENANCE	0	.06	.12	.18	
7. FACTORS ASSOCIATED WITH CONTROL EQUIPMENT	0	.06	.12	.18	
8. ACTION TAKEN TO MITIGATE VIOLATION	0	.06	.12	.18	
9. GOOD FAITH EFFORT TO COMPLY	0	.06	.12	.18	
10. FINANCIAL BURDEN TO VIOLATOR	0	.06	.12	.18	
TOTALS OF MITIGATION COLUMNS					
MIT (SUM OF MITIGATION TOTALS)					
TF = (AGG - MIT)					

SETTLEMENT OFFER = C x TF x N

\$ _____ x _____ x _____ = \$ _____

GUIDELINES FOR SCORING AGGRAVATION FACTORS

FACTOR	MEANING	GUIDELINES FOR SCORING
EXTENT OF HARM (SIZE)	INJURY TO AIR QUALITY, PROPERTY, OR PERSONS. RELATED TO THE AMOUNT EMITTED	<p>LOW = NO OR SMALL EMISSION IN SIZE WITH NO DAMAGE TO PEOPLE OR PROPERTY, OR 0 – 5.0 LBS/DAY OF ANY POLLUTANT.</p> <p>MEDIUM = MEDIUM EMISSION IN SIZE, SOME DAMAGE TO PEOPLE OR PROPERTY, 5.1 – 15.0 LBS/DAY OF ANY POLLUTANT, OR ANY NOV RESULTING FROM A COMPLAINT.</p> <p>HIGH = LARGE EMISSION IN SIZE, OR SUBSTANTIAL DAMAGE TO PEOPLE OR PROPERTY, >15.0 LBS/DAY OF ANY POLLUTANT, OR ANY NOV RESULTING FROM TWO OR MORE COMPLAINTS.</p>
NATURE & PERSISTENCE (TYPE)	NATURE AND TYPE OF POLLUTANT	<p>LOW = ANY POLLUTANT, EXCLUDING NON-ATTAINMENT POLLUTANTS AND TOXICS</p> <p>MEDIUM = NON-ATTAINMENT POLLUTANTS OR PRECURSORS</p> <p>HIGH = ANY TOXIC AIR CONTAMINANT, INCLUDING PERC, GASOLINE, AND DIESEL PARTICULATES</p>
LENGTH OF TIME (DURATION)	AMOUNT OF TIME IN VIOLATION DURING THE DAY OF THE VIOLATION	<p>LOW = IMMEDIATE SHUTDOWN OF PROCESS OR BATCH ONCE THE VIOLATION OCCURS. INCLUDES ADMINISTRATIVE VIOLATIONS FOR WHICH THERE ARE NO EXCESS EMISSIONS.</p> <p>MEDIUM = PROCESS CONTINUES UP TO 4 HOURS AFTER THE VIOLATION OCCURS</p> <p>HIGH = PROCESS EXCEEDS 4 HOURS AFTER THE VIOLATION OCCURS OR CONTINUES UNABATED</p>
PAST VIOLATIONS (HISTORY)	IN ORDER FOR A PREVIOUS VIOLATION TO BE CONSIDERED A PAST VIOLATION FOR THE PUPOSES OF THIS SECTION, IT MUST BE SIMILAR IN NATURE AND MUST HAVE OCCURRED WITHIN THE LAST 3 YEARS. EXCEPTION: PREVIOUS RECORDKEEPING VIOLATIONS MAY BE TREATED AS PRIOR VIOLATIONS IF A SUBSEQUENT EMISSION VIOLATION IS DOCUMENTED BY RECORDS. FOR PERMITTED FACILITIES, PREVIOUS VIOLATIONS OCCURRING AT ANY OTHER SIMILAR PERMIT UNIT AT THE SAME FACILITY MAY BE CONSIDERED PAST VIOLATIONS IF THE SAME RULE IS VIOLATED WITHIN THE LAST THREE YEARS.	<p>0 = NO VIOLATIONS</p> <p>LOW = 1 VIOLATION</p> <p>MEDIUM = 2 VIOLATIONS</p> <p>HIGH = > 2 VIOLATIONS</p>
ECONOMIC BENEFIT OF NONCOMPLIANCE (BENEFIT)	ANY COST AVOIDED TO COMPLY/PROFIT OR ADVANTAGE GAINED, INCLUDING LABOR AND MATERIALS	<p>LOW = 0 - \$500</p> <p>MEDIUM = \$>500 - \$2000</p> <p>HIGH = > \$2000</p>

GUIDELINES FOR SCORING MITIGATION FACTORS

FACTOR	MEANING	GUIDELINES FOR SCORING
DEGREE & RECORD OF MAINTENANCE (PREVENTION)	ANY MAINTENANCE RELATED TO AIR POLLUTION	<p>N/A = WHAT IS REQUIRED BY THE RULES, NORMAL STANDARD OF CARE, OR PERMIT TO OPERATE</p> <p>LOW = EXCEEDS WHAT IS REQUIRED BY THE RULES, NORMAL STANDARD OF CARE, OR THE PERMIT TO OPERATE</p> <p>MEDIUM = GREATLY EXCEEDS WHAT IS REQUIRED BY THE RULES, NORMAL STANDARD OF CARE, OR THE PERMIT TO OPERATE</p> <p>HIGH = EXTRAORDINARY MEASURES EMPLOYED TO MAINTAIN COMPLIANCE</p>
FACTORS ASSOCIATED WITH CONTROL EQUIPMENT (INNOVATION)	ABOVE WHAT IS NORMAL, USE OF EXPERIMENTAL EQUIPMENT	<p>N/A = NOT INNOVATIVE</p> <p>LOW = ONLY ONE OTHER EXAMPLE IN USE IN THE STATE</p> <p>MEDIUM = NO OTHER EXAMPLES IN USE IN THE STATE AND CAPITAL OUTLAY FOR EQUIPMENT IS GREATER THAN \$50,000 BUT LESS THAN \$100,000</p> <p>HIGH = NO OTHER EXAMPLES IN USE IN THE NATION AND CAPITAL OUTLAY FOR THE EQUIPMENT IS >= \$100,000.</p>
ACTION TAKEN TO MITIGATE VIOLATION (RESTITUTION)	ACTIONS TAKEN AFTER THE SOURCE IS NOTIFIED OF A VIOLATION; RELATED TO CLEAN UP OR IMPROVEMENTS FOR THE PREVENTION OF FUTURE VIOLATIONS	<p>N/A = ACTIONS TAKEN WERE MINIMAL, A RETURN TO COMPLIANCE</p> <p>LOW = ACTIONS BEYOND WHAT IS REQUIRED TO COMPLY</p> <p>MEDIUM = CLEAN UP AT GREAT COST, BEYOND WHAT IS REQUIRED AND/OR COMPLETE EQUIPMENT REPLACEMENT, BEYOND THE DAMAGED COMPONENT, FOR THE PURPOSE OF PREVENTING FUTURE VIOLATIONS</p> <p>HIGH = EXTRAORDINARY EFFORTS BEYOND WHAT IS REQUIRED TO CLEAN UP AFTER THE VIOLATION AND/OR INSTALLING ADDITIONAL CONTROL EQUIPMENT FOR THE PURPOSE OF PREVENTING FUTURE VIOLATIONS OR PERMANENTLY TERMINATING THE ACTIVITY, PROCESS OR EQUIPMENT (AND THE ASSOCIATED PERMIT TO OPERATE) WHICH CAUSED THE VIOLATION</p>
GOOD FAITH EFFORT TO COMPLY (DILIGENCE)	ACTIONS TAKEN PRIOR TO THE NOV. DESIGNED TO ENSURE COMPLIANCE. RELATED TO THE VIOLATION.	<p>N/A = SOME EFFORT BUT BELOW WHAT IS REQUIRED BY THE P/O OR RULE</p> <p>LOW = WHAT IS REQUIRED BY THE RULE OR P/O, INCLUDING SELF-REPORTING, BREAKDOWN NOTIFICATIONS, VARIANCE APPLICATIONS SUBMITTED PRIOR TO NOV, AND SOURCE TESTING.</p> <p>MEDIUM = EFFORTS ABOVE AND BEYOND WHAT IS REQUIRED TO COMPLY WITH THE P/O OR RULE</p> <p>HIGH = EXTRAORDINARY EFFORTS ABOVE AND BEYOND WHAT IS NECESSARY TO COMPLY WITH THE P/O OR RULE, INCLUDING SELF REPORTED VIOLATIONS PROVIDED THAT SELF REPORTING IS NOT ALREADY REQUIRED BY PERMIT, RULE, OR ANY OTHER REGULATION.</p>
FINANCIAL BURDEN TO VIOLATOR (FINANCIAL IMPACT)	BURDEN OF THE PENALTY TO THE VIOLATOR. FOR CASES INVOLVING MULTIPLE NOV'S, CUMULATIVE BURDEN MAY BE CONSIDERED IF THE NOV'S ARE RELATED. THERE WILL BE NO FINANCIAL BURDEN CONSIDERATION IF THE PENALTY BEFORE OR AFTER APPLICATION OF FINANCIAL BURDEN CREDIT IS LESS THAN THE ECONOMIC BENEFIT OR LESS THAN \$1,000.	<p>PROPOSED SETTLEMENTS MAY BE ADJUSTED FOR FINANCIAL BURDEN ONLY AFTER DEMONSTRATION OF A BURDEN THROUGH SUBMITTAL OF CREDIBLE EVIDENCE. IF WARRANTED, ADJUSTMENTS WILL BE MADE BASED ON PERCENTAGE OF GROSS INCOME AS FOLLOWS:</p> <p>< 1.0% = 0</p> <p>1.0% - 2.4% = LOW</p> <p>2.5% - 7.4% = MEDIUM</p> <p>>7.4% = HIGH</p>

Performance Measure Development

- We believe the development and implementation of the MSA at the BAR will serve as a basis for implementing measures of performance. Further, we believe the MSA will ultimately improve air quality, positively impact the consumer and provide industry enforcement consistency. To that end we recommend that:
 1. The IMRC, ARB, BAR, and Industry develop a “Mutual Settlement Agreement” process, as currently authorized under statute for the ARB and air districts and that process should be utilized by the BAR to determine penalties for violations. The “Mutual Settlement Agreement” process should be developed individually for station owners and technicians. The “Mutual Settlement Agreement” as agreed to should include a schedule of monetary penalties for both technicians and licensees. If the Licensee and the technician are one and the same the monetary penalty should apply to both.

2. The BAR, in conjunction with IMRC, ARB and the industry, should develop a “Performance Grading System” (PGS) for all licensed smog inspection stations. Factors to be included in the PGS shall include but not be limited to: The number of violations received by a licensee during the previous 12 months, the repair durability of CAP repairs and the results of any completed audits or investigations of a licensee performed by the BAR during the previous 12 months. The PGS should also be included as an element within the “Mutual Settlement Agreement” process.
- Upon annual review of the PGS, the BAR shall recommend to the IMRC appropriate penalties for licensee infractions or violations that did not previously receive a monetary penalty. The IMRC may concur, alter or disagree with the recommendation of the BAR. The BAR shall take action as directed by the IMRC. If not one and the same, strong consideration shall be given to the performance of the licensee independent of the technician.

- Upon conclusion of the annual review, the BAR should recommend a Performance Grade for each licensed smog inspection station. Each station should be notified in advance of the proposed grade. The Licensee should be given the opportunity to appeal the grade to the IMRC. The IMRC's recommendation to the BAR shall be final. The Performance Grade should be placed in a location at each licensed smog inspection station that is visible to consumers. The form utilized for the Performance Grade should be developed by the BAR and approved by the IMRC.
- The evaluation of performance utilizing the MSA will be useful to the BAR in directing enforcement efforts and provide consumers with on-site information on individual station performance. Finally, it will provide high performing stations with the opportunity to enhance their marketing efforts.

Customer Satisfaction Index Rating

- The IMRC spent considerable time and resources in the preparation of the July 2005, release of its “Consumer Information Survey”. We believe, as does the IMRC, that consumer satisfaction is a critical element to program acceptance. We also believe another parallel element of important information exists that further explains the results of this survey and has yet to be utilized. That element is the dramatically large number of volunteer vehicles that have the choice to select any emission inspection station to obtain their test.
- During the 2005 calendar year, 9,153,748 vehicles received emission inspections. Of that amount, 2,802,612 were directed to Test-Only stations. The remaining 6,351,136, referred to as volunteer vehicles, were tested by station type in the following percentages:

Test-Only	44.04%
Test and Repair	53.97%

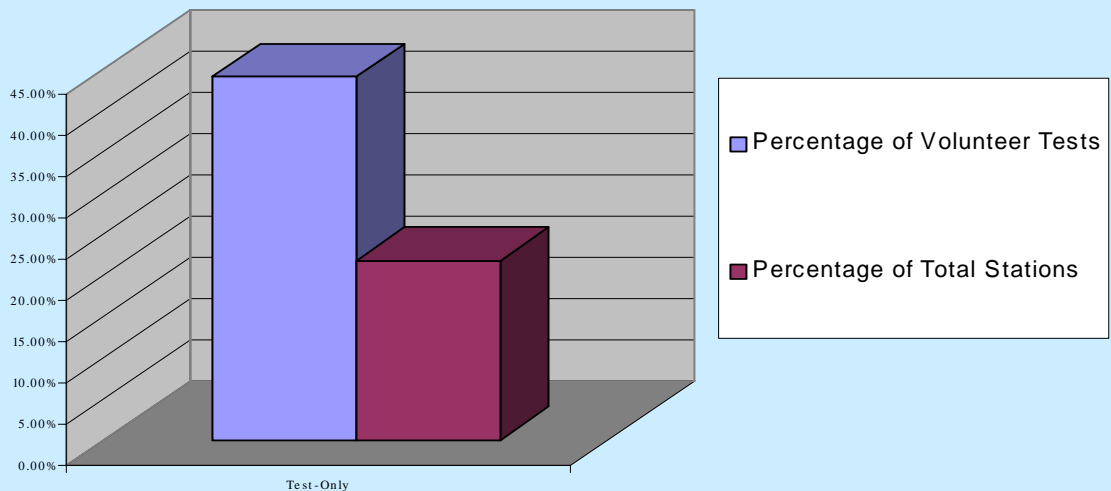
*Fleet, government and referee inspections were subtracted from inspection numbers

*Test data taken from BAR Executive Summary Archives

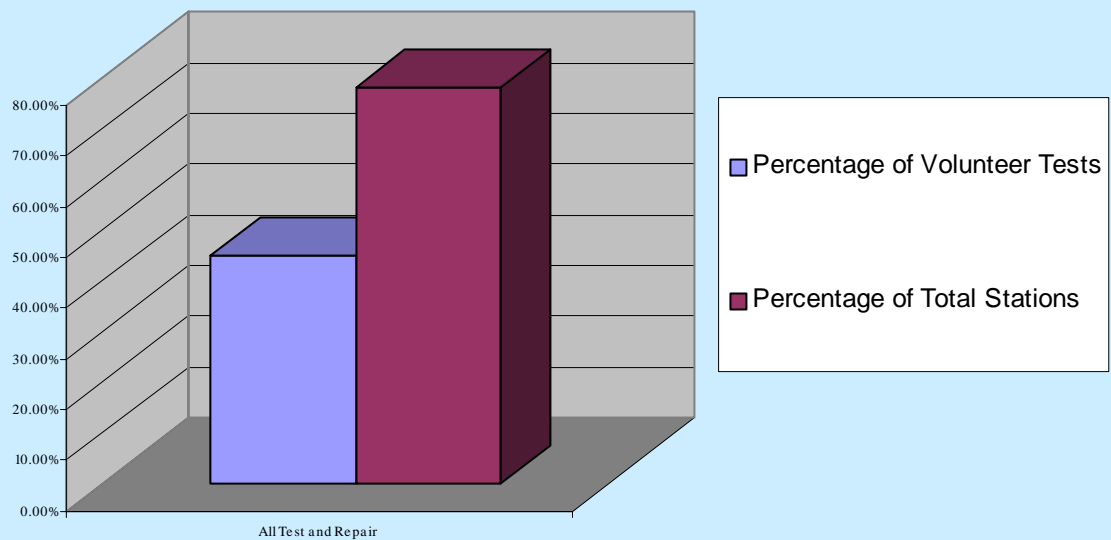
- During the 2005 calendar year 8,180 stations existed. The number of stations by station type is as follows:

	No. of Stations	Percent of Total
Test-Only	1,779	21.75%
Test and Repair	6,402	78.25%

Test-Only Percentage of Volunteers



All Test and Repair Stations Percent of Volunteers



- As this information dramatically portrays, a large number of consumers are choosing to have their emission inspection conducted at Test-Only Stations. What does this mean? If the IMRC Consumer Information Survey is correct, then it means that consumers find Test-Only stations to be very convenient. It is also clear that convenience is not solely attributable to location since there are far fewer Test-Only stations than test and repair stations. We also know it is not a function of price, since the BAR reports the average inspection price for each station type is nearly the same.
- While it is evident that consumers find Test-Only stations to be the most convenient, the question becomes: Why do a substantial number of consumers appear to avoid test and repair stations? If it isn't price and it isn't location (there're 3.5 times as many test and repair stations as there are Test-Only stations) then what aspect of convenience is important?

- We believe the Test-Only success is attributable to effective marketing of the emissions inspection. Test-Only stations are only able to sell the test. Typically, test and repair stations advertise the emissions inspection along with the other services they perform. This may be a serious obstacle to gaining consumer acceptance of a station's specific interest in providing a convenient emissions inspection. While this may not be the only reason, it does provide one plausible explanation for the success of Test-Only stations.
- We agree with the Consumer Information Survey recommendation that it be conducted as part of future evaluations. We also believe expanding the scope of the survey would answer important questions raised by this presentation.
- Finally, we recommend the IMRC work with industry and consumer interests to develop a "Consumer Satisfaction Index" rating.

- **Consumer Satisfaction Index Rating**
- We believe all licensed vehicle emissions inspection stations should have the opportunity to participate in an annual Consumer Satisfaction Survey. This participation would be at the option of the station. The survey could be constrained to vehicle emissions inspections or be expanded to include other emissions equipment related repairs or service. Upon conclusion of the survey, each station would be notified of the result and then be required to post the result in a manner predetermined by the IMRC.
- We believe the consumer friendliness of the program to be a critical element to program success. Further, it is critical to consumer acceptance of future program enhancements such as evaporative emissions testing, annual testing and altering cut points. Therefore, it is also critical that inspection stations be motivated to be as consumer friendly as possible. We believe a Consumer Satisfaction Index Rating would serve as considerable motivation in this endeavor.